

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC CITIZEN,
1600 20th Street NW
Washington, DC 20009,

Plaintiff,

v.

DEPARTMENT OF HEALTH
AND HUMAN SERVICES,
200 Independence Avenue SW
Washington, DC 20201

Defendant.

Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This action is brought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to compel the Department of Health and Human Services (HHS) to produce records responsive to a FOIA request for annual reports submitted to HHS's Office of Inspector General (OIG) pursuant to certain corporate integrity agreements between OIG and pharmaceutical companies.

JURISDICTION

2. This Court has jurisdiction over this action under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

PARTIES

3. Plaintiff Public Citizen is a nonprofit public interest organization. Since its founding in 1971, Public Citizen has worked before Congress, regulatory agencies, and the

courts to advance the interests of its members and educate the public on a wide range of consumer protection issues. In particular, Public Citizen works to promote openness in government, corporate accountability, and consumer health and safety.

4. Defendant HHS is an agency of the United States and has possession of and control over the records that Plaintiff seeks.

FACTS

5. By letter dated November 12, 2009, Plaintiff submitted a FOIA request for “a copy of all annual reports submitted to the Office of Inspector General (OIG) by Purdue Pharma L.P. pursuant to the May 2007 Corporate Integrity Agreement between OIG and Purdue Pharma L.P.,” and for “a copy of all annual reports submitted to OIG by Pfizer, Inc. pursuant to the May 2004 Corporate Integrity Agreement between OIG and Pfizer.” Plaintiff also requested a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii).

6. On November 16, 2009, HHS denied Plaintiff’s request for a fee waiver. Plaintiff appealed this denial on December 3, 2009, and on January 7, 2010, HHS granted the fee waiver.

7. By letter dated June 22, 2010, HHS stated that it located 1,177 pages of records responsive to Plaintiff’s request regarding the Purdue reports. However, it “determined to withhold 1,093 pages in their entirety under FOIA exemptions (b)(4) and (b)(6) and partially released 84 pages with portions withheld under FOIA exemptions (b)(4) and (b)(6).”

8. By letter dated July 6, 2010, Plaintiff timely appealed the partial denial of its FOIA request regarding the Purdue reports. On April 12, 2011, HHS denied Plaintiff’s appeal.

9. By letter dated September 21, 2010, HHS stated that it located 9,432 pages of records responsive to Plaintiff’s request regarding the Pfizer reports. It withheld 5,216 pages in

their entirety, citing FOIA exemptions (b)(4) and (b)(6), and released 4,216 pages “with portions withheld under exemptions (b)(4) and (b)(6).”

10. By letter dated October 20, 2010, Plaintiff timely appealed the partial denial of its FOIA request. Under 5 U.S.C. § 552(a)(6)(A)(ii), HHS had 20 working days from receipt of Plaintiff’s appeal letter to respond. More than 20 working days have passed and HHS still has not responded to Plaintiff’s appeal.

11. Under 5 U.S.C. § 552(a)(6)(C)(i), Plaintiff has exhausted its administrative remedies.

12. Plaintiff has a statutory right to the records it seeks, and HHS has no legal basis for failing to disclose those records to Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

- (1) Declare that Defendant’s withholding of the requested records is unlawful;
- (2) Order defendant to make the requested records available to Plaintiff;
- (3) Award Plaintiff its costs and reasonable attorneys’ fees; and
- (4) Grant all other appropriate relief.

Respectfully submitted,



Adina H. Rosenbaum
D.C. Bar No. 490928
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
arosenbaum@citizen.org

Counsel for Plaintiff

Dated: September 16, 2011